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Chair

The Honourable MaryAnn Mihychuk

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● (1530)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): I will start the meeting.

I want to recognize officially that we're on the unceded territory of the Algonquin people, an important fact and one that we try to remember and reflect on daily, as we're beginning a process of understanding the truth of our history of colonialism—apartheid here in Canada—and how we resolve the history through reconciliation.

We have a full agenda with two panels. We are talking about UNDRIP, the United Nations declaration and, of course, the provisions within it. It is a time for change in Canada, and I think that we're all privileged to be part of that positive change.

We are here pursuant to order of reference of Wednesday, February 7, 2018, studying Bill C-262, an act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples.

As presenters, you'll have up to 10 minutes, and after all the presentations are done we'll go into a series of questions from the MPs.

It looks as though my friends from the Prospectors and Developers Association of Canada are first on the agenda.

Welcome, and we look forward to your presentation.

Mr. Michael Fox (President of Indigenous Community Engagement Inc., Co-Chair, Aboriginal Affairs Committee, Prospectors and Developers Association of Canada): *Meegwetch.Wachay.*

Good afternoon, Chair and committee members.

I'd like to acknowledge that we are on the territory of the Algonquin Nation.

My name is Michael Fox. I'm from the Mushkegowuk Territory, from a community called Weenusk First Nation on Hudson Bay coast. I'm also an elected board member of the Prospectors and Developers Association of Canada, PDAC.

I'm joined by my colleague Lesley Williams, the director of policy and programs of the PDAC.

The PDAC is a national voice of Canada's mineral exploration and development industry, representing over 7,500 members. We work to sustain a vibrant and responsible mineral industry and ensure that Canada is the top destination for mineral investment so we can continue to make new discoveries that will become tomorrow's mines and generate significant economic opportunities for Canadians.

Thank you for the opportunity for me to be here today to provide input on behalf of the mineral industry in relation to aspects of Bill C-262. Our comments will focus mainly on the evolution of the partnerships between the mineral industry and indigenous people in Canada. I particularly want to share the ways in which the on-the-ground activities of our sector demonstrate our leadership in indigenous engagement, which in our view are consistent with the spirit and principles of UNDRIP.

The mineral industry strongly supports the government's commitment to a renewed relationship with indigenous peoples. However, discussion of the process around UNDRIP proposed by Bill C-262 cannot be separated from the broader questions, such as what mechanisms would be used to achieve UNDRIP implementation in Canada and what it would look like in practice. While we do not have amendments to propose to the bill, we hope that sharing the story of our industry will provide a practical example of the indigenous community partnerships that exist in practice and in parallel to frameworks such as UNDRIP.

The value of Canada's mineral industry cannot be overstated. The mineral exploration and mining industry makes vast contributions to our country from remote indigenous communities to rural areas to large cities. It generates significant economic and social benefits for Canadians.

The relationship between indigenous communities and businesses in the mineral industry in Canada is a shared success story to be proud of. Our industry has made many advancements in all areas, in health and safety, the environment, and community participation, but we are especially proud of our leadership working with indigenous partners on engagement and participation. For all parties involved this has not necessarily been an easy journey. It remains a work in progress.

In recent decades the relationship has gone through a significant transformation, particularly as the landscape has evolved. Some might argue that the legal framework in Canada was the sole catalyst for creating an environment for companies to engage with indigenous communities. However regulations do not create relationships. I'll say that again. Regulations do not create relationships.

Companies are, of course, responsible for abiding by what is legally required, but it is increasingly understood and accepted industry practice that regulatory requirements are the minimum standards for operation. While they are necessary, they do not exactly translate into the development of meaningful partnerships. Mineral industry leaders realize that building partnerships with communities is critical to the success of their project, not because it's the right thing to do or because the law requires something, but because good partners lead to successful projects that benefit everyone.

The evolution we have seen in the mineral industry is unparalleled. More so than any other Canadian industrial sector the mineral sector has a proven track record of effectively working toward maintaining a positive and respectful relationship with indigenous communities. More importantly the result has been positive mutual benefits.

Proportionally the mineral industry is the largest private sector employer of indigenous people in Canada. We have seen over the last couple of decades markedly increased community participation in projects on a number of different levels, from project design, environmental assessment, employment, etc. We have witnessed increased industry awareness about indigenous people in Canada, specifically the history and unique cultures of local communities.

Mineral exploration and mining companies are also embracing indigenous traditional knowledge and are incorporating it while they seek input on their projects. In addition to the benefits of direct involvement in the exploration and mining companies, there has also been a proliferation of indigenous businesses that provide an expanding number of services to the sector, such as drilling, heavy equipment, camp catering, to name a few. Economic opportunities generated by mineral development have contributed improvements to the socioeconomic conditions of a number of communities, including investments in training initiatives and community development.

A key mechanism through which relationships and economic opportunities have been formalized in Canada is through community-company agreements. These voluntary agreements are increasingly recognized internationally as a leading practice. A significant number of agreements have been signed between companies and indigenous communities, with over 500 agreements signed since 1974, the majority within the last decade.

● (1535)

These agreements include various commitments, such as training and skills development, employment targets, contracting, joint venture provisions, community investments and development, environmental monitoring, and financial considerations. These agreements are a testament to the strength of commitment by the industry in developing mutually beneficial partnerships and to the interests of many indigenous communities and the economic development opportunities generated by the minerals sector.

Overall, a long-lasting, trusting partnership has been developed between the minerals industry and indigenous communities all across Canada, from early exploration to mine developments enclosure. These are positive, mutually beneficial relationships. You need to look no further than the Éléonore project in Quebec, Ekati in the Northwest Territories, or New Afton in British Columbia.

Despite the significant positive outcomes of company-community partnerships, the narrative that is, unfortunately, most prevalent is that there is widespread discord, which generates the perception that the nature of company-community interactions is adversarial. As I have demonstrated, this is not typically the case.

Relationships are complex, comprehensive, and constantly evolving. Naturally, challenges will arise, but these are not insurmountable. That said, there are larger public policy issues that have an impact on industry-community relations.

Numerous unresolved issues exist across Canada related to jurisdiction and land claims. While matters of jurisdiction are strictly negotiated between the crown and indigenous people, these challenges can generate a sense of uncertainty. Often industry can be caught in the middle of jurisdictional issues that are not within its control.

Ongoing socio-economic conditions for many indigenous communities remain dire and we can all agree require immediate action. Foundational investments that contribute to the improved quality of life for communities are needed. Challenges related to health, education, housing, etc., can impact the ability of indigenous people to participate in mineral projects and to fully realize opportunities generated by the industry. Furthermore, ambiguity and complexity related to the crown's duty-to-consult processes has resulted in delayed projects, increased costs, investor uncertainty, and negative impacts on company-community relationships.

PDAC's cross-country research identified some key, overarching challenges with the way in which federal, provincial, and territorial governments implemented the duty to consult. Some of these include the trigger for consultation in its scope; the process for identifying impacted communities; roles and responsibilities, including delegation to proponents; the crown's role in consultation costs; the timeline for the process; and defining accommodation.

Government has committed to renewed relationship with indigenous people. This has encompassed a commitment to implement the calls to action of the Truth and Reconciliation Commission, a review of laws and policies, and the creation of a recognition and implementation of the rights framework. These actions are a positive step towards addressing some of the policy challenges I have raised.

These are not small tasks. There is a lot of work to be done. We applaud these efforts by the government in taking interest in how crown and indigenous relations will evolve. Meanwhile, the minerals industry will continue to be a leader. It will put into practice principles of engagement, and will reflect respect for indigenous rights, relationship building, and partnership development on the ground at exploration mining sites across Canada.

A strong, global, comparative Canadian exploration mining sector will be well positioned to deliver local, regional, and national benefits. As I have outlined here, it is the cornerstone of this strong, trusting relationship between companies and indigenous communities that results in mutual benefits.

Thank you. *Meegwetch*.

● (1540)

The Chair: Thank you.

We'll move now to the Native Women's Association of Canada.

Francyne and Veronica, welcome. Francyne, you have up to 10 minutes.

Ms. Francyne Joe (President, Native Women's Association of Canada): *Weyt-k*, *bonjour*, and good afternoon, Madam Chair and members of the committee.

I would like to begin by acknowledging the Algonquin and the Anishinaabeg peoples and thank them for allowing us on their unceded traditional territory, with special acknowledgement to the indigenous women and their families for whom NWAC exists.

Thank you for the invitation to share the Native Women's Association of Canada's perspectives on Bill C-262, which proposes an act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples. NWAC is in full support of this bill and all the implications that come with it.

The United Nations Declaration on the Rights of Indigenous Peoples does not create new laws or rights. It enhances the existing rights of indigenous peoples and holds the Government of Canada accountable for ensuring respect to first nations, Inuit, and Métis communities. It also emphasizes that indigenous peoples have the right to self-determination. What this bill sets out to do is implement the inherent human rights that indigenous peoples have and to enforce those rights within the Canadian legal system. Indigenous people should not only be consultants of the government but also participating members of all decision-making. This is not about saying yes or no; it's about creating equal and inclusionary negotiations.

At the end of my remarks, I will be making recommendations specific to the needs and issues of indigenous women, but overall, Bill C-262 is a good first step towards a better and stronger partnership between the federal government and indigenous authorities.

Indigenous women exist at the intersection of multiple forms of discrimination tied to gender, race, and colonialism. As a result, indigenous women face many barriers and obstacles to accessing their basic human rights. A fundamental human right is the right to education. We are seeing indigenous women and girls with lower levels of education than the rest of the Canadian population as well as with less access to adequate education. Often this can be attributed to poverty and discrimination based on geographic location.

There is a growing number of the indigenous population who identify as having a disability or functional limitation, especially first nations women living on reserves. As a triply marginalized group, indigenous women with disabilities face systemic and structural barriers that are not typically faced by non-indigenous and able-bodied Canadians.

There's a lack of culturally appropriate services available to indigenous women, whether they are health services or social services. Health care is a human right, and being culturally sensitive and trauma informed is crucial to delivering those services in a way that doesn't re-traumatize or cause further harm to our communities.

Social, political, and economic marginalization of indigenous women limits access to necessary and appropriate supports and services that reduce the impacts of poverty. Housing is a necessity, and indigenous women are more susceptible to homelessness, poverty, and violence. The most successful method of combatting poverty is empowering women through increased employment, access to education, access to health care, protection of cultural practices, and fostering socio-economic autonomy.

As activists and grassroots women have highlighted for decades, indigenous women and girls and gender-diverse people continue to experience discrimination on multiple grounds and in various forms. In terms of violence, indigenous women and girls 15 years and older are three to five times more likely to experience violence. Indigenous women have reported fearing for their lives over the last few decades at a much higher percentage than non-indigenous women and are also more likely to be murdered by strangers than non-indigenous women.

Canada's national inquiry into missing and murdered indigenous women and girls is currently hearing first-hand accounts that provide a heartbreaking foundation to these statistics through the stories told by the families and loved ones of our murdered and missing sisters. I mention this to highlight that everyone in Canada has a charter-guaranteed right to life, liberty, and security of person, and we must do everything we can to ensure that this becomes a reality in the lives of indigenous women rather than remaining a mere paragraph in a government document.

In Canada, indigenous peoples continue to be overrepresented in the correctional system. According to Correctional Services Canada, indigenous women, who represent only 4% of the female population in Canada, make up to 41% of women in sentenced custody. This is a clear link to systemic discrimination based on racial, cultural, and colonial prejudices that need to be identified and scrubbed from our legal and judicial system. Everyone has the right to a fair trial and equal treatment under the law.

The correctional system isn't the only one that sees staggeringly high percentages of indigenous peoples. Child and family services is the other. Over 50% of children within the child welfare system are indigenous. Currently there are more indigenous children in care than at the height of residential schools.

● (1545)

As per article 2 of UNDRIP, indigenous women will be recognized as equal to all men and women. Article 22 builds on this, cementing that the government must ensure that all indigenous women and girls can access their human rights and fundamental freedoms in all political, social, economic, and cultural contexts.

Article 18 ensures that indigenous women have the freedom and right to participate in all decision-making matters that would affect their rights. As you can imagine, this is a particularly important article for NWAC because it reflects what we have been fighting for since our inception in 1974.

Articles 6 and 9 refer to the right to a nationality and the right to belong to an indigenous community or nation in accordance with their traditions and customs. As countless studies have found, and as indigenous peoples have been saying for as long as colonialism has existed, self-determination is a key part of empowering indigenous communities.

Finally, to ensure that Bill C-262 leads to the full and effective harmonization of Canadian law with UNDRIP, we recommend the following: one, development of a mechanism that will ensure accountability and consistency; two, a commitment to ensure that language is inclusive and will reflect the rights, respect, and co-operation of indigenous women and LGBTQ2S; three, the recognition of the intersection of multiple forms of discrimination tied to gender, race, and colonialism; four, going beyond UNDRIP by including the specific needs and issues of the diverse indigenous communities in Canada—this includes a specific distinctions-based approach that recognizes the diversity amongst and between first nations, Inuit, and Métis communities.

Thank you for your time. *Kukwstsétsemc. Meegwetch.*

The Chair: *Meegwetch.*

Now we go to the Barreau du Québec for up to 10 minutes.

Mr. Paul-Matthieu Grondin (President of the Quebec Bar, Barreau du Québec): Madam Chair, I'll be doing this in French, if anyone needs the earpiece.

[*Translation*]

Members of the committee, I am joined today by Francis Walsh, a member of our committee on the law and indigenous peoples, as well as Julien Pelletier-David, our special adviser on access to justice.

We are very grateful for the opportunity to share our views on Bill C-262 with the committee.

The Barreau du Québec supports this important bill, which seeks to harmonize Canada's laws with the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly on September 13, 2007 and signed by Canada on November 12, 2010.

This international instrument is the result of a lengthy process that began in the 1970s. It provides guidelines to states, the UN, and other international organizations on how to build harmonious relations with indigenous peoples based on the principles of equality, partnership, good faith, and mutual respect.

However, it merely represents a political commitment on the part of the states who voted in its favour.

Given that the declaration, itself, is not legally binding, provisions outside the realm of customary international law must be incorporated into domestic law in order to take full effect. This requires legislative measures. What's more, given that we have two levels of government, each must implement the declaration in accordance with its constitutional authority. Co-operation is therefore essential to the declaration's successful implementation. Keep in mind that full implementation hinges not only on good faith and legislative measures, but also, and above all, on funding.

The Barreau du Québec has repeatedly expressed its support for the adoption of the UN Declaration on the Rights of Indigenous Peoples, and we are here today to reiterate that support. Bill C-262 is hugely important to the advancement of the rights of indigenous peoples in Canada and should provide the normative framework for the policies that the Canadian government needs to adopt swiftly in its efforts towards reconciliation.

We believe that respect for the fundamental rights of indigenous peoples is a priority. Crime, victimization, and incarceration rates among indigenous peoples are appalling; in Quebec, the communities in Nunavik are especially affected. When the number of criminal records in a community nears or exceeds the size of its population, the question we need to be asking is where and how has the justice system failed to bring that number down. The question is not how many additional resources the system needs to handle the cases.

The Barreau du Québec is of the view that the way in which the justice system treats indigenous peoples is untenable. Back in 2013, the Barreau was criticizing the glaring lack of resources in northern Quebec. Working in the region, the Barreau came to the unequivocal realization that the gap between the justice apparatus and the indigenous communities it was supposed to serve was ever-growing. We are fully aware that the problem is not limited to Quebec, with all provinces plagued by the same issues. Too little has changed thus far.

All too often, the justice system is used to deliver a front-line response, taking the place of basic services. The significant lack of social, medical, and prevention-based resources creates a void that is filled by the justice system. Courts are frequently called upon to address the socio-economic failings. What's more, all of these services must make up for decades of trauma inflicted on communities.

The Barreau du Québec recently appeared before Quebec's public inquiry commission on relations between indigenous peoples and certain public services, in Val-d'Or, and made 36 recommendations to improve the situation. One of those recommendations was that Quebec adopt the UN Declaration on the Rights of Indigenous Peoples, as Canada is currently doing. We also proposed ways that the justice system could meet the needs of indigenous people.

Daunting though the challenge may be, it is nevertheless clear that every effort must be made to give Canada's indigenous communities maximal autonomy over their system of justice. Part of that is creating indigenous law institutes, as the Royal Commission on Aboriginal Peoples recommended in its report more than 20 years ago.

This endeavour requires far more than just cosmetic changes. A comprehensive reform is needed, and we are well aware that such a reform hinges on the clear political will of all stakeholders, not to mention adequate financial and human resources.

The Canadian government signed the UN Declaration on the Rights of Indigenous Peoples, committing to its full implementation in Canadian law. To that end, it is time for the government to turn its attention to the urgently needed changes that the country's indigenous people are owed. The declaration requires states to recognize the right of indigenous peoples to maintain their traditions, their legal customs and, where they exist, their systems of justice. Every level of government must exercise their constitutional authority and take appropriate action.

Openness, vision, creativity, and humanity must guide the eventual process of establishing legal systems that are truly tailored to the needs of indigenous peoples.

● (1550)

Simply passing Bill C-262 is not enough. In order to implement the UN Declaration on the Rights of Indigenous Peoples, the government needs to undertake a comprehensive review of Canadian laws and amend them accordingly. The Barreau du Québec applauds the creation of the working group of ministers on the review of laws and policies related to indigenous peoples and hopes that this long-awaited endeavour will bring real change. Still, there is no doubt that this bill is highly symbolic and meaningful, illustrating the government's commitment to implementing the declaration. Not only is it the first step towards implementation of the declaration, but it is also a step towards reconciliation.

In short, we urge the government to put the necessary measures in place to ensure harmony between Canada's laws and the UN Declaration on the Rights of Indigenous Peoples. This endeavour could ultimately lead to a more effective and equitable justice system for all Canadians. Bill C-262 is but the first step in the long road ahead.

I want to conclude by saying that the Barreau du Québec realizes just how much work lies ahead and extends its full co-operation in this essential effort towards reconciliation.

It is now my pleasure to turn the floor over to Mr. Walsh.

Mr. Francis Walsh (Member, Comité sur le droit en regard des peuples autochtones, Barreau du Québec): Given that the passage of Bill C-262 is but the first legislative step towards implementing the UN Declaration on the Rights of Indigenous Peoples, we will not comment on each of the articles in the declaration.

We do, however, wish to provide some practical advice on administering the future statute. Picking up on a recommendation put forward by the Native Women's Association of Canada, the Barreau proposes that the annual report prescribed in clause 6 of the bill be made publicly available. The report is an accountability tool that will serve to keep elected representatives apprised of how consistent measures in the area of indigenous law are with the purpose of the bill.

The Barreau also wishes to point out that the measures in the bill cannot be successfully implemented without the co-operation of indigenous peoples. Therefore, the government must do more than submit an annual report in order to achieve genuine and effective co-operation.

● (1555)

The Chair: Thank you very much.

[*English*]

Now we're going to questioning.

We will start with MP Will Amos.

[*Translation*]

Mr. William Amos (Pontiac, Lib.): Thank you, Madam Chair. I'd like to give two or three minutes of my time to my colleague Mr. Tootoo. Could you kindly let me know when I'm down to three minutes?

Thank you to our witnesses.

My questions are for the Barreau du Québec representatives.

I'd really like to know your view on something. You raised some very important issues, not the least of which being the importance of investing in indigenous communities in order to respect the principles set out in the declaration, for all of our sakes.

Now let's get to the elephant in the room as far as the crown's role is concerned. What kind of attitude and commitment do you think the provinces will put forward? I'd like you to be forthright and honest. In Quebec, how do you see the issue of the declaration playing out, not just politically speaking, on all sides, but also as regards the legislative and legal system? How do you see that unfolding?

Mr. Paul-Matthieu Grondin: As we said in our statement, the road that lies ahead is very long indeed.

The Barreau du Québec has called on the provinces to adopt the declaration. That's a first step. I think we are still just waking up to this issue. The Barreau wants to be part of the solution. Internally, our committees are still trying to figure out what this will mean in tangible terms, time- and money-wise.

I know that's not quite the answer you are looking for, but we are at a point where we have to follow through on the declaration and fulfill our obligations. That will mean ongoing and extensive discussions. That's all I can say right now.

Mr. William Amos: Would any of your colleagues care to comment?

We are on the traditional territory of the Algonquin nation, and I represent many members of that nation. They tell me they are glad that I am able to help them. The federal government has tremendous challenges to deal with, and we are working on them.

That said, we have a long way to go when it comes to the province of Quebec. Sometimes I get the feeling that there isn't any dialogue at all. It is true that a number of issues need to be dealt with, including funding support and consequences.

Do you think those are the right issues to address? Isn't the real issue for the federal and provincial governments figuring out how to initiate a genuine and constructive dialogue?

● (1600)

Mr. Paul-Matthieu Grondin: I think it's an issue that needs to be dealt with. We'll have to see how that takes shape on a practical level. It is necessary, but I think we're really only at the beginning of this awakening. Our committees are very busy looking at the issue right now.

You're definitely asking the right questions. The Barreau du Québec is more concerned about the legal dimension and the technical work in that regard. Of course, we would always welcome better government relations. Our expertise, though, really applies to the legal aspects of the UN declaration. That, specifically, is our area of focus.

Mr. William Amos: Thank you for your answers.

I was a member of the Barreau du Québec for about a decade, so I know just how important the work of your committees is, not to mention the political and legal influence the Barreau exerts. I hope that you will continue your work on this issue.

I will now turn the floor over to my colleague Mr. Tootoo.

[*English*]

Hon. Hunter Tootoo (Nunavut, Ind.): Thank you, Mr. Amos.

Welcome to the witnesses. My question is for Ms. Joe and Mr. Grondin.

Francyne, you talked about self-determination, participating members, the overrepresentation, and all the social ills. I think, Mr. Grondin, you discussed that as well. It's no secret in my riding in Nunavut, and, I'm sure, in any indigenous community across the country.... A lot of these problems, I look at them as effects. To address the cause, I've always said that we need to make sure people's basic needs are met. I think for 150 years now that hasn't happened. We've been kind of choked off at the wallet. You talk about addressing some of these issues, obtaining self-determination, and ensuring that Canada is falling in line with the rights of indigenous people. I think, Mr. Grondin, you mentioned that we need not just cosmetic but deep changes, financial changes.

Do you think there needs to be a significant investment from Canada in all indigenous communities to make those changes? We hear all the time that we can't afford it, but my view is that we can't afford not to. I'd like to hear your thoughts on that.

Ms. Francyne Joe: *Merci.*

You're exactly right in that our peoples have been overlooked. Our opinions have been respected but not implemented. It's very important for our communities, especially our indigenous women, to be part of the conversations when decisions are being made that affect their lives and their families. Their input is not being respected nor incorporated into the policies that are going to affect them.

I think it's very important, as we stated, to be working together in order to ensure that this bill makes Canada and the policies that affect our daily lives better. That's going to hopefully minimize the socio-economic gap that affects our indigenous peoples, especially our women and children.

I hope that answers your question.

The Chair: Thank you. Your time has run out.

We are moving now to questioning from MP Kevin Waugh.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Thank you.

I'm going to pick up on this. In your view, does the declaration provide sufficient protection on violence and discrimination for indigenous women? Perhaps you could elaborate.

Ms. Francyne Joe: I like the simplicity of the question. It's easier to answer.

It's a start. This bill will start to listen to the voices and concerns of indigenous women and the LGBTQ2S, our concerns about policies and legislation that affect our housing, our health, our business skills.

Every day, we're told by our peers sometimes and our federal government what we can and cannot do. We have an inherent right that has never been eliminated, that should recognize we're a part of our own future. We're a part of taking control of a community, locally, provincially, nationally, where we can make it better, where we should not have to worry about violence towards our sisters, our children, our own communities.

I think it's important. By empowering our communities, our women, our children, it's going to protect them. We can do it ourselves; we just need to be given the resources and have those inherent rights recognized and honoured.

Thank you.

● (1605)

Mr. Kevin Waugh: Okay, thank you.

Mr. Fox, you talked about relationships, partners and partnerships. We've seen that in the mineral and mining industry for decades, and that is certainly up north right now. Maybe you could expand on what this bill would do.

We've heard some industry concerns throughout the country, but are those concerns warranted? What's your view on this, if this is adopted?

Mr. Michael Fox: I think the practice of our members—the majority of our members—is in the spirit and the intent of this bill. I think the federal government's NRCan website actually tracks all the different agreements across Canada, and we're 500-plus to date.

The only challenge I see in the future, not particularly with this bill, is the clarity around the implementation, and that's for any legislative project that the federal government implements. The proposed impact assessment act is a prime example. It's a new bill. How it's going to be implemented is everybody's question. As practitioners around that, I think—

Mr. Kevin Waugh: How would your organization like to see it implemented?

Mr. Michael Fox: Every project is different. It's project-specific, community-specific, site-specific. There's a balance of interests for each of those projects and agreements. How that turns out is a process of dialogue, relationship building, as well as implementation.

It doesn't just stop when everybody signs the deal. The implementation is a process of ongoing dialogue as well, and I think it's going to be the same here. If this is implemented—when it's implemented—there's the practice of recognizing indigenous rights by our members, and assisting in whatever way the socio-economic conditions that the members soon face when they meet the community the first time and learn about how they can contribute to the overall quality of life, based on whatever framework they're operating in.

Mr. Kevin Waugh: Good.

I'm going to move over to the Quebec bar association, if you don't mind.

Thank you for your presentation. You said that Bill C-262 is not a complete answer; it's symbolic. We have said all along that Justice needs to be at this committee. You mentioned that.

Can you elaborate a little more on this angle? I mean, you're just one province out of 10 and the territories. How would Justice be involved here, in your opinion?

[*Translation*]

Mr. Paul-Matthieu Grondin: It is very clear to us that the justice system is failing, especially in northern Quebec. I'll give you a specific example involving the region's Inuit population. Given the vast distances covered, people who are supposed to appear in court often don't show up on time because of inadequate transportation. Those people end up facing continued detention.

We do not think that funding should be what underpins people's rights. In our view, people's rights are being violated in the north because of a choice not to put money into the justice system. What's more, instead of putting the appropriate socio-economic resources in place, the government is allowing the justice system to take the place of a front-line service. That is where people first come into contact with the government, and that's not how it should work.

That's why we believe the justice element is so vital, especially in northern Quebec. That is undeniable. In that part of the country, people's basic rights are being violated simply because resources are lacking. There should never be a choice between respecting people's rights and investing financial resources, especially when it affects a specific population.

● (1610)

[*English*]

The Chair: You have about 30 seconds.

Mr. Kevin Waugh: Is it all about funding? What would this bill do to improve this?

[*Translation*]

Mr. Paul-Matthieu Grondin: It's largely about funding. That's very obvious when it comes to our justice system in Quebec. However, this bill clearly changes the perspective, how the law is viewed. Yes, funding needs to be discussed, but in our case, this gives us an opportunity to talk about Quebec and the legal implications of the declaration, of course. In terms of how we look at each of our laws, we believe indigenous law represents a very significant shift in paradigm. Let's be clear about that.

[*English*]

Mr. Kevin Waugh: Thank you.

The Chair: Questioning now moves to MP Romeo Saganash.

[*Translation*]

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): Thank you, Madam Chair.

I'd also like to thank the witnesses who are with us this afternoon.

I'm going to start with the representatives from the Barreau du Québec, and I'm going to speak in French. When I get up in the morning and I speak French first, I tend to keep speaking French all day long. It's cognitive.

You said an international declaration was not on a par with an international convention or treaty, and you are absolutely right. Be that as it may, I'd like to know whether international declarations on human rights have any legal implications, in your view.

Mr. Francis Walsh: The Barreau is of the view that the declaration, and declarations in general, have legal implications and interpretive value. Consider the Supreme Court of Canada's decision in Baker v. Canada. The court indicated that declarations have interpretive value in the context of Canadian law. That has some significance. Although the Barreau has not done a full analysis of the declaration, we maintain that some of its provisions could fall under the scope of customary international law. With that in mind, the Barreau is of the view that those provisions already carry some legal weight in Canada. That is the Barreau's position on the matter.

Mr. Romeo Saganash: I very much appreciate your answer and I share your view.

In one of his decisions, a former chief justice of the Supreme Court, Brian Dickson, stated—back in 1989, I believe—that declarations were pertinent and compelling when interpreting a country's laws.

Mr. Grondin, you talked about the costs of implementing the declaration. I tried to find research dating back to when Canada was considering adopting the Canadian Charter of Rights and Freedoms and incorporating it into the Constitution. I didn't find any studies that outlined the costs of implementing the charter in Canada.

Are you familiar with any studies on the subject?

To my mind, the UN Declaration on the Rights of Indigenous Peoples is an instrument for the protection of human rights.

Should we put a price tag on respecting those rights?

Mr. Paul-Matthieu Grondin: No. I want to be perfectly clear, Mr. Saganash. What the Barreau du Québec is saying is that funding should not be the issue that underpins the declaration's adoption. I understand exactly what you are getting at. My answer to your question is no. We are not aware of any such studies. They may be out there, but we aren't aware of any.

● (1615)

[*English*]

Mr. Romeo Saganash: Mr. Fox, you talked about partnerships and the need for clarity in the implementation of the UN Declaration on the Rights of Indigenous Peoples. I've taken your points very well. I think it's important to have that.

A prime example in this country is northern Quebec. Since 1975 when we signed the James Bay and Northern Quebec Agreement, the Cree have signed, with your industry and others, over 80 agreements. Why did that happen? In my view it's the fact that, with the James Bay and Northern Quebec Agreement, we set the rules clearly for everybody. If they want to develop in northern Quebec, there are rules that they have to abide by.

Do you think that Bill C-262 would have the same effect?

Mr. Michael Fox: That's a good question. We live with divided constitutional powers and so I think part of the deep collaboration that allowed that was your province and the federal government and your people. You probably need that deep collaboration, and deep alignment and deep consensus in areas across Canada as well. That was, again, project-triggered, the hydro site. I think it's a positive hypothetical scenario that if this did that and allowed the clarity and projects to flourish like it did in the James Bay agreement, I would applaud that. But, as I said, deep strategic alignment around that would be required by all parties. That's the best answer I can give you on that.

Mr. Romeo Saganash: You mentioned one of the projects in northern Quebec, Éléonore, which is in my riding. I think one of the things that should be raised in that respect is the fact that when the company came into northern Quebec they had this 500-page document called the James Bay and Northern Quebec Agreement, a constitutional document, and they knew how to go about it. Similarly to the UN declaration, the James Bay and Northern Quebec Agreement is a partnership agreement and it forges those partnerships that you talked about.

Thank you for your presentation and for your support for this bill. Similarly to, le Barreau du Québec, they did support the previous bill that I presented in the previous Parliament.

Francyne, in your presentation you talk about the security of the most vulnerable in our society: the youth, the elders and of course, the women. The UN declaration is said to be the minimum standards for the dignity, well-being, and survival of indigenous peoples. Do you think that we should also add the word "security" to those three principles?

The Chair: Before you answer, I'd just like to remind MPs to be cognizant of the time.

MP Saganash, you know that you have gone over and I want to hear the answer so I hope that the committee is going to be somewhat tolerant.

Give your answer please.

Ms. Francyne Joe: The short and sweet answer is yes. We'll submit further information regarding that answer after this presentation.

The Chair: Thank you. We're all set on an agreement of time and I don't want to cheat anybody else or cut into their time.

Now the questioning goes to MP T.J. Harvey.

Mr. T.J. Harvey (Tobique—Mactaquac, Lib.): Thank you, Madam Chair.

Thank you to all the witnesses for being here with us today. We've had a broad range of perspectives from a broad range of viewpoints throughout this study.

I'm going to start with Mr. Fox and Ms. Williams.

PDAC is an organization that has led on this file continually for a long time and has an outstanding reputation within the natural resources sector in Canada as a result. I'm wondering if you could elaborate on some of the key advantages that other industries, especially in the natural resources sector, could garner from the implementation of Bill C-262, and how that could positively affect the way they do business in the years to come, in other words, how they can leverage it as a strategic advantage.

● (1620)

Mr. Michael Fox: All we can say is that we're leaders on community engagement and negotiations, but it's built on relationships. Relationship building and engagement are what build the foundation for project success. We and other industry associations try to gather their insights and best practices, and offer guidance to their members. Whether that's our membership or forestry or mining or pipeline, they all have their members. They are engaged in very specific types of projects, which have different environmental footprints and effects. They do their best to offer their best practice based on the type of activity they're proposing.

That's what we've been doing for a while, as have other industry associations. Again, every sector is different, and every project is different. We can only offer our best guidance to our members when it comes to community engagement and engagement with the indigenous community specifically.

Mr. T.J. Harvey: As a representative of PDAC, would you say that FPIC represents a significant potential for organizations to take advantage of opportunities, as opposed to some of the negative criticisms we've seen or heard in the past around free, prior, and informed consent? Rather than looking at it as a negative, can it be seen as an opportunity to collaborate and forge those partnerships together?

Mr. Michael Fox: The track record of PDAC members actually proves that some form of FPIC or consensus-making is what we do well with communities. Again, it's based on relationships, creating the relationship with communities, understanding their interests, understanding their needs and aspirations, and understanding how a particular project can assist in that. There are a lot of empowering elements in that, whether they be training, education, health and safety, being part of the environmental assessment, predevelopment, pre-construction, operations, or all of the supporting service companies around the project.

It takes a lot of effort on the part of our members to make that happen. Every partnership is formed in its own setting. A community may be a multi-site community; it's not just one community on one site. It could be that off-reserve decision-making is required. There are different ways to achieve the consensus around projects.

It's not a practice that's foreign to the indigenous communities themselves. They do it under the Indian Act around land designations. They have to go through a process if they want to do things on reserve, and then they have to go through a land designation community engagement process for the leadership. It's all to get the consent of the people to do something specific around their reserve lands.

Even modern-day mechanisms like income trusts also go out to members and engage to try to achieve consensus. It's not new. It's a practice in which our industries have participated in different forms and different ways.

● (1625)

Mr. T.J. Harvey: Thank you.

I'm going to give the balance of my time to Mr. Tootoo.

Hon. Hunter Tootoo: How much time do I have?

The Chair: You have a minute and a half.

Hon. Hunter Tootoo: Maybe before I go on, Mr. Grondin, there was my previous question. I don't know if you remember it, but it looked like you wanted to respond. I'll give you a chance. Do you remember it?

[*Translation*]

Mr. Paul-Matthieu Grondin: I'm going to answer in French.

In Quebec, the issue is justice in the north. We have numerous justice-related challenges in the region. Those in the justice system are working hard, but there's a huge lack of resources. Whether we are talking about translation services or court workers, much is needed in order to provide people in the north with a high-quality justice system.

We want to be as vocal and as open about it as we can. Indigenous people are entitled to a justice system that works. As it stands, the justice system is taking the place of basic services, and that shouldn't be the case. It's time to really talk about that.

[*English*]

The Chair: You have 10 seconds.

Hon. Hunter Tootoo: I think it's not only high-quality services, it's basic services.

I won't have time, Mr. Fox, but I know in Nunavut we have a very good regulatory regime that developed under a land claims agreement and a regulatory regime that involves the federal government, the territorial government, and Inuit organizations. I'm wondering if you've thought of setting up something like that—

The Chair: I think that MP Tootoo is wrapping up and giving his thanks.

Hon. Hunter Tootoo: Yes.

The Chair: Yes, you've run out of time.

MP Cathy McLeod, please go ahead.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you.

I'm going to spend my few short minutes to Mr. Fox. I did appreciate your comment in terms of the New Afton mine because, of course, we know there has been a good agreement put in place in terms of royalty sharing, benefit agreements, and employment opportunities. Actually, the most fascinating is some of the work they're doing around bat habitat protection and the partnership that they have there.

Clearly, from the mining perspective and the projects like Prosperity and Ajax, they did not have community indigenous support and those projects were turned down. The jurisprudence, I think, is getting pretty clear. I keep going back to the same thing because I'm not yet satisfied with the answers I'm getting.

If we go from the current jurisprudence that we have to the new free, prior, and informed consent, and I'm going to use Kinder Morgan again because it's very close to mind right now, some of the NDP representatives have said that every single community impacted must give consent or it is a veto and cannot go ahead.

From your understanding of this legislation, if they move forward to a new framework that does not consult and accommodate, which for mining essentially means consent, but perhaps for a cross-boundary project means there are times where someone ultimately has to make a decision, are we potentially heading into more litigation and more confusion? Do you have any comments on that?

Mr. Michael Fox: What we do well is community engagement and partnerships—we really do—but the final decision at the end of the day is with the crown. We enable things, and even when we submit our project description, go through the environmental assessment and all the mitigation tables, and actually show either impact project agreements, at the end of the day, it's still the crown that approves the project.

If they do approve, and a lot of times it's with terms and conditions that add either more costs or work on the part of the proponent to accommodate those terms and conditions made by the crown, it's not the project proponent that decides whether the project is going to go ahead or not. The decision-making is largely left at this point in time with the crown. The proponent really follows the rules of the land, in this case you're saying in B.C.

Mrs. Cathy McLeod: Essentially, if this legislation comes to be, the crown will have a new level of responsibility around the jurisprudence and the commitment that they're making around FPIC around transboundary trends.

I guess you can't speak for how the crown and the legal—

● (1630)

Mr. Michael Fox: I can tell you that the trend out there is that communities, with the province and probably with the territories—I'm not familiar with the territories and how they work—have co-planning, co-management, and probably shared decision-making.

Mrs. Cathy McLeod: The current jurisprudence is allowing for a very effective regime, and we're getting better and better at it.

The Chair: That ends our time for this panel.

We'll take a short break, and then the other panel will be coming together.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Madam Chair, while we have a new panel coming in, because we do have a vote at 5:45 and the bells will start at 5:15, I'm just wondering if we can have agreement that we have 10-minute presentations and one round of seven-minute questions. It will be an additional six minutes at the meeting.

Mrs. Cathy McLeod: If we have three presentations....

Mr. Gary Anandasangaree: We have three presentations, yes.

Mrs. Cathy McLeod: That takes us to 5:00, and then are you saying three seven-minute questions?

Mr. Gary Anandasangaree: Yes, we'll do a full round, one round.

The Chair: All right.

● (1630)

(Pause)

● (1635)

The Chair: *Merci beaucoup. Meegwetch* . Thank you for coming.

The same rules apply. You'll get up to 10 minutes, and then we'll go through a round of questions from the MPs.

In the order on the agenda, we're going to start with Jennifer Preston from Canadian Friends Service Committee.

Ms. Jennifer Preston (Program Coordinator, Canadian Friends Service Committee): Good afternoon. I am the daughter of Sarah Jane and Richard Preston and the mother of Sarah Jane Howe. I was born in the territory of the Leni Lenape, and I spent significant time in my childhood in Cree territory. I now live in traditional Anishinabek and Haudenosaunee territory.

Canadian Friends Service Committee, CFSC, is the justice and peace organization of the Religious Society of Friends, Quakers. As a faith body, Quakers have been working for peace and justice for centuries. Quaker service organizations were awarded the Nobel Peace Prize after the Second World War for our commitment to justice and peace. Quakers are what is called a "historic peace church". Our peace testimony is at the root of our faith. Peace and justice are interlinked. We cannot be at peace where there is injustice.

I am not indigenous, and I do not represent an indigenous constituency. However, when human rights are violated, we all need to be concerned. When indigenous peoples' human rights are affirmed and promoted, we are all winning. In our view, the UN declaration is a good news story. Bill C-262 is vitally important to non-indigenous people in Canada.

For the past two decades, my professional work has focused deeply on the UN Declaration on the Rights of Indigenous Peoples, first, in the international processes where it was developed and adopted, and then, for the past decade, on implementation. As someone with a long history of experience and expertise with the declaration, I have published extensively on the subject, including co-editing a book entitled, *The UN Declaration on the Rights of Indigenous Peoples : Triumph, Hope, and Action*. I am often invited to present on the declaration to diverse audiences and am delighted to be here today.

CFSC fully supports Bill C-262, and we urge all members of Parliament to adopt it in a non-partisan manner. I gave much thought about what I should share this afternoon. You have heard already from many witnesses, and I don't wish to duplicate the efforts of others. At the same time, there are some elements surrounding Bill C-262 that are worth repeating. Indigenous peoples went to the UN to negotiate the declaration because they did not have justice in a domestic context. This is the most discussed human rights instrument in the history of the UN, and Canada played a significant role. Indigenous peoples did this work to ensure that changes would occur on the ground.

In the decade since the UN General Assembly's adoption, there have been pockets of interesting work on implementation accomplished mainly by indigenous peoples themselves, but it is overwhelmingly evident to those of us who work intimately with the declaration that we need the national legislative framework that Bill C-262 provides.

For many faith bodies, including Quakers, the work of the Truth and Reconciliation Commission was critically important, and it created a watershed moment in this country. As you know, the Indian residential school system was part of the destructive forces of the colonization of Canada. The exemplary work of the TRC informs us of both the journey and the legacy of colonization.

What did we learn? The truth. We learned about the sexual, physical, and spiritual abuse. We learned about the widespread dispossession of land. We learned about the attempted destruction of traditional governance and legal structures; religious conversion; and attempts at forced assimilation, including the prohibition of languages, traditional culture, and spiritual practices. We learned about the racist and sexist Indian Act, much of which is still in effect. We learned about the secondary consequences associated with loss of culture, language, and identity, including intergenerational trauma. The TRC and the former chief justice of the Supreme Court of Canada, Beverley McLachlin, concluded that this constituted cultural genocide.

What does the TRC suggest to move forward now? What is reconciliation? I'm going to read a quote from a report released by the TRC entitled "What We Have Learned: Principles of Truth and Reconciliation":

> ..."reconciliation" is about establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country. For that to happen, there has to be awareness of the past, acknowledgement of the harm...atonement for the causes, and action to change behaviour.

I very much concur with call to action 43 that the United Nations Declaration on the Rights of Indigenous Peoples is the framework for reconciliation. It can also be described as the blueprint. Former UN secretary-general Ban Ki-moon called the declaration the "road map" for reconciliation. The TRC very skilfully wove the UN declaration through their work. Sixteen calls to action refer specifically to the declaration. Any attempts to undermine the UN declaration are also striking at reconciliation.

This brings me to Bill C-262. This bill creates a legislative framework to ensure that we do indeed implement the UN declaration, not just talk about it.

● (1640)

The TRC concluded that a refusal "to respect the rights and remedies in the declaration will serve to further aggravate the legacy of residential schools, and will constitute a barrier to progress towards reconciliation".

Bill C-262 offers Canada a crucial opportunity to move from a colonial framework that dispossessed indigenous peoples to become a nation-state that acknowledges the harm, atones for the causes, and commits to change.

Bill C-262 provides the federal government with the framework to create a paradigm shift that we so urgently need to move away from colonization.

This week, perhaps later today, the national leaders of many churches in Canada, including those that ran residential schools, are writing to leaders of all political parties to urge non-partisan support for Bill C-262. Many faith bodies have been actively championing the declaration and Bill C-262. Why? As people of faith we are committed to peace and justice. We recognize the injustice we have been a part of, and we are committed to change. We are committed to the deconstruction of power structures that have and continue to oppress indigenous peoples.

Change can be difficult or even scary. Of course, I am aware of the fear that has been generated around both the declaration and this bill. My analysis is that this fear is rooted into hanging onto colonial constructs of power and perpetuating domination and exploitation.

Last spring when I was on a speaking tour in northern British Columbia on both the declaration and on FPIC, I gave an interview to CBC North. The interview included questions around the fear, and finally I said, "No, Chicken Little, the sky is not falling." Clearly I was being glib, but the point is we have to let go of these unfounded fears. We need to embrace implementing the declaration through Bill C-262 as something we can all be proud of as we move forward into a new reality that's based on a contemporary human rights framework and not on colonialism.

Members of this committee have questioned other witnesses about FPIC, and I'm not going to go into detail on that. I am aware that Paul Joffe will be covering that later this afternoon. However, I wish to reiterate that FPIC was not created in the declaration; it is well established in international law, and Canada already has an affirmative legal obligation to respect FPIC.

I do have a possible addition to the preamble to further entrench the importance of reconciliation. The text could be something as follows:

> Whereas, as concluded by Canada's Truth and Reconciliation Commission, the declaration provides the necessary principles, norms, and standards for reconciliation to flourish in a 21st century Canada.

Senator Murray Sinclair informed us that truth was hard and reconciliation would be harder. At the closing events of the TRC, he also instructed all of us, "We have described for you a mountain. We have shown you a path to the top. We call upon you to do the climbing."

Over the past two decades occasionally people asked me why Quakers are so committed to this work. The answer is simple. There is no peace without justice.

● (1645)

The Chair: That's very nice.

The second presenter is Pat Van Horne from the United Steelworkers.

Go ahead, for up to 10 minutes. Thank you.

Ms. Pat Van Horne (Legislative Representative, National Office, United Steelworkers): Thank you very much.

I want to thank you for inviting the United Steelworkers to speak with you today.

My name is Pat Van Horne. I'm the legislative representative for the union, and I'm based here in Ottawa. I've also brought with me, in the peanut gallery, a number of our members who are here this week talking to MPs on another important issue, which is retirement security, but we won't talk about that now. I'm also here on behalf of our national director Ken Neumann, who could not join me today.

The United Steelworkers represent over 180,000 women and men employed in all sectors of the Canadian economy right across the country. Many of our members are indigenous peoples—first nations, Métis, and Inuit. Many are employed, for example, by Cameco, at the uranium mines in Saskatchewan; the Vale nickel mines in Voisey's Bay, Labrador; Glencore's Raglan Mine in northern Quebec; in logging and sawmills from Ontario to B.C.; at the Frontier School Division in northern Manitoba; and many other places.

USW has a long history of struggle for social justice and human rights for working people, their families, and their communities. Today, along with many Canadian organizations and institutions, which include unions, we are taking active steps to work toward reconciliation and full recognition of the rights of indigenous people.

Our support for Bill C-262 is based on an official policy position adopted by USW members in 2016, and it reflects their deep concern as citizens, co-workers, and community members from all walks of life in all parts of the country, over the unjust and racist history of Canada's treatment of indigenous peoples.

We also have within our union an aboriginal people's committee, which meets regularly and brings issues to the larger union.

The adoption of Bill C-262 would be a powerful affirmation of Canadians' collective desire to do better and engage in genuine reconciliation with first peoples. More than that, Bill C-262 would provide a practical, rights-based path that Canada must follow in order to ensure that reconciliation is comprehensive, far-reaching, and uncovers and redresses the colonial legacy embedded in Canada's legal, economic, political, and other systems, which, I dare say, includes our economic relationships with employers.

The rights-based approach of Bill C-262 is a key part of efforts to address crisis in many indigenous communities and among many indigenous people in Canada's urban areas. This crisis includes, as has been mentioned many times, inadequate education, health, child welfare, and housing. It includes gender-based violence, poverty, and the loss of language and cultural identity. These are big jobs to do, but I think Canadians are up for it, and this bill would help.

If properly implemented, Bill C-262 would help ensure that there is a comprehensive, consistent legal framework based in international law within which indigenous communities can work with private, non-state actors to arrive at equitable arrangements for resource and community development. In fact, the representative from PDAC alluded to that in his presentation.

The USW would never accept a mine design that was unsafe. The USW would never accept a mining operation based on the harassment or exploitation of workers and their families, or a mine constructed without environmental safeguards preventing the poisoning of local communities. Health and safety has been one of our major thrusts throughout our history and particularly over the last 25 years since the Westray mine explosion. Likewise, the USW can no longer accept mines built without consultation and participation of indigenous rights-holders in decision-making, in violation of UNDRIP. That, of course, means free, prior, and informed consent, among other things.

The USW is not concerned that the adoption of Bill C-262 would somehow paralyze resource development in Canada. On the contrary, the implementation of Bill C-262 would help ensure that the Canadian legal system offers a clearer framework for balancing rights and a more certain basis on which resource development decisions can be made. In our experience, when indigenous communities feel secure in their rights, they are quite prepared to entertain appropriate proposals, including partnership for resource development, collective bargaining, and other issues.

● (1650)

My final comment is simply that processes like this one, Bill C-262, to make human rights meaningful in a relationship fraught with racism and exploitation, in a framework of colonialism, will help organizations like the United Steelworkers to become instruments of reconciliation, where solidarity is the guiding principle.

Thank you for your attention, and I'm happy to answer any questions.

The Chair: Thank you.

Now we go to our last presenter. We're glad to have you. You have up to 10 minutes to present. Go ahead.

Mr. Paul Joffe (Lawyer, As an Individual): Thank you very much.

Good afternoon, honourable committee members. I'm pleased to be on the unceded traditional territory of the Algonquin people and to have this opportunity to appear before this distinguished committee.

I commend the committee for examining Bill C-262, the short title of which is the United Nations Declaration on the Rights of Indigenous Peoples act.

A strong bill, when adopted, will make a significant contribution to national reconciliation and the Truth and Reconciliation Commission's calls to action. In particular, I wish to acknowledge the determination of MP Romeo Saganash in bringing Bill C-262 to this critical juncture. His accomplishments to date are all the more significant since he is the only indigenous MP who is a residential school survivor.

Let's begin with the living tree doctrine. Aboriginal rights affirmed in section 35 of the Constitution Act, 1982 are subject to progressive interpretation. This is consistent with the living tree doctrine that applies to Canada's Constitution. As decided by Canada's highest court in 1984 in Hunter et al. v. Southam:

> Once enacted, [the Constitution's] provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers.

The UN declaration constitutes a new social, political, and historical reality, a consensus human rights instrument that elaborates on the rights of indigenous peoples globally. As the Supreme Court indicated in Reference re Same-Sex Marriage, "A large and liberal, or progressive, interpretation ensures the continued relevance and, indeed, legitimacy of Canada's constituting document."

My next point emphasizes that indigenous peoples' rights are human rights. Mr. Saganash has repeatedly emphasized in Parliament and in this committee that indigenous peoples' rights are human rights. This crucial characterization is beyond question. Successive federal governments, both Conservative and Liberal, have confirmed to the United Nations that the aboriginal and treaty rights of indigenous peoples in Canada are human rights in Canada's domestic legal system. For over 35 years, indigenous peoples' inherent rights have been addressed within the UN human rights system. Therefore, all governments, business entities, academics, and others in Canada should recognize the human rights quality of indigenous peoples' rights.

In Tsilhqot'in Nation v. British Columbia from 2014, the Supreme Court of Canada underlined that the Canadian "Charter forms Part I of the Constitution Act, 1982, and the guarantee of Aboriginal rights forms Part II." The court went on to say, "Parts I and II are sister provisions, both operating to limit governmental powers, whether federal or provincial."

In the 1987 Reference Re Public Service Employee Relations Act case, which was in Alberta, chief justice Brian Dickson emphasized that declarations and other sources of international human rights law "must...be relevant and persuasive sources for interpretation of the [Canadian] Charter's provisions." In other words, if international declarations are being applied to interpret human rights in part I of the Constitution Act, 1982, then the same must be true for indigenous people's human rights in part II.

● (1655)

Thus it is essential that subclause 2(2) of Bill C-262 affirm:

> Nothing in this Act is to be construed as delaying the application of the United Nations Declaration on the Rights of Indigenous Peoples in Canadian law.

As confirmed in Canadian and international law, indigenous peoples' rights are inherent or pre-existing. In the absence of subclause 2(2), some people might claim that the rights in the UN declaration would not apply until the collaborative processes in clauses 4 and 5 of the bill determined the nature and scope of such rights.

Now let's turn to the important issue of consent versus veto. FPIC, or free, prior, and informed consent, is not created by the UN declaration. The declaration affirms and elaborates upon existing rights; it does not create any new rights. The term "veto" is not used in the UN declaration. Veto implies an absolute right, that is, no taking into account the facts and law in each case. There is no balancing of rights. This is neither the intent nor interpretation of the UN declaration, which includes some of the most comprehensive balancing provisions in any human rights instrument, especially article 46(3) which indigenous representatives negotiated with Canada.

Consent is an essential element of the right of all peoples to self-determination. This right is included in identical article 1 of the two international human rights covenants that Canada ratified in May 1976. FPIC and international law have the same meaning as consent in Canadian law. In both cases, if there is duress, there is no valid consent. The same is true if consent is sought only after a project is initiated or if the information provided is inadequate or misrepresented.

At the international level, the application of FPIC to indigenous peoples is supported by the UN General Assembly, the UN Secretary-General, the Office of the High Commissioner for Human Rights, UN treaty bodies, specialized agencies, UN special rapporteurs, the UN Permanent Forum on Indigenous Issues, and the UN Expert Mechanism on the Rights of Indigenous Peoples. None of these entities, bodies, or mechanisms describe FPIC as a veto.

The same is true for the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights. Consent must include the option of withholding consent. This conclusion clearly makes sense. It would be absurd to conclude that indigenous peoples have the right to say yes, but not the right to say no, even in the most damaging circumstances.

With a view to ensuring co-operative and harmonious relations, I respectfully propose three amendments to Bill C-262 for your consideration.

With regard to the first amendment, the current title of Bill C-262 does not fully reflect all of the matters addressed. Thus, I propose the title, "An Act to implement the United Nations Declaration on the Rights of Indigenous Peoples and promote reconciliation".

My next two amendments would fit nicely at the very beginning of the preamble.

The following new paragraph reflects the wording of both the UN Expert Mechanism on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Issues, and would read as follows: "Whereas implementation of the United Nations Declaration on the Rights of Indigenous Peoples constitutes a principled framework for justice, reconciliation, healing, and peace;".

Finally, my third amendment just reflects the 18th preambular paragraph of the UN Declaration, and reads as follows: "Whereas affirmation of the rights of Indigenous Peoples in that Declaration will enhance harmonious and cooperative relations between Canada and Indigenous peoples;".

● (1700)

Thank you.

The Chair: That was perfect timing.

Questioning now goes to MP Anandasangaree.

Mr. Gary Anandasangaree: Thank you very much to the panel for being here.

Mr. Joffe, your name has come up over and over again with respect to UNDRIP, so we're quite honoured to have all of you here sharing your knowledge and wisdom.

I want to share my time with MP Vandal, but I do want to talk to you about one aspect of your presentation, and that is whether we need to have Bill C-262 in order for UNDRIP to be applicable in Canadian law. I know you suggested that international conventions and declarations essentially are part of domestic law. In this particular case, I would like to get your position as to whether we even need this.

The second part of this is your views with respect to the recognition of rights framework that was introduced several weeks ago by our government.

Mr. Paul Joffe: I realize I have a little bit of time.

Yes, it's true. The Supreme Court has said, as I said, in 1987 and since then they've affirmed that international declarations are relevant and persuasive sources for interpreting human rights in Canada. So there's no question. But it goes farther than that.

First of all, indigenous governments, the federal or provincial governments, and all the human rights commissions in Canada under CASHRA, which is the umbrella group, support the UN declaration. People are free to use the declaration.

The benefit of having legislation is, first of all, that this legislation creates collaborative processes. That's always been a problem. When it isn't collaborative and legislators do things alone, unfortunately throughout Canada history has shown that there's been colonialism, there hasn't been an understanding, the problems have been entrenched in legislation, and we haven't gotten anywhere.

In terms of the recognition and rights framework—to be very quick—we'll have to see what that includes, but of course it fits with Romeo's bill. It's another step.

The way you implement the UN declaration in Canada, though, is not just to adopt Bill C-262. It's to integrate it in your various pieces of legislation. That way no one can say there's uncertainty. Let's say you're dealing with indigenous languages. If you fit it into, let's say, the preamble, the reference, or whatever, and show how it's going to be used and how it's going to reinforce the objectives of all legislators, that would help. It should be done with the proposed impact assessment act, Bill C-69. It should be done with Bill C-57. That way you not only create consistency but you also avoid uncertainty and meet the legislators...whatever.

I don't want to take their time.

Thank you.

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): My question would be around free, prior and informed consent.

My question is for Pat Van Horne.

How do you measure consent for, let's say, a mining project?

Ms. Pat Van Horne: I think I would defer to Mr. Joffe on that one, but certainly some of what you heard with PDAC this afternoon, as well, that consent isn't a one-way street. Consent is two ways, and if this legislation is geared towards ensuring that, then I think that's what makes it necessary—

● (1705)

Mr. Dan Vandal: Since my time is very limited, maybe I will move to Paul.

How do you measure consent?

Mr. Paul Joffe: Consent will be different depending on the processes you're dealing with.

If you're dealing with an international convention or instrument, like they were with climate change when Canada invited indigenous peoples to be part of it, in such a process it has to fit the process. If you're dealing with constitutional change, like we did when we had the Charlottetown accord, again, consent was reached among all political leaders—

Mr. Dan Vandal: Is it a collective indigenous right or is it an individual right?

Let's talk about Kinder Morgan. Let's assume UNDRIP was already approved. We have many first nations who are against it, but over 40 have signed benefit agreements. Assume they are for it. Is that consent or is it not consent?

Mr. Paul Joffe: In every situation, you take in the facts and the law. You have to.

Let's say you have 15 first nations. Half go one way and half go the other way, and you have all these different opinions. One has to look at the facts and the law. What if certain first nations were going to suffer serious and long-term impacts? I believe a court would give more weight to those first nations than to some who said, "Well, we're not going to be affected much by the project, but of course we're going to take the impact and benefit agreement", or whatever.

In other words, in every case you have to look at the facts and the law. One cannot just ask how is it going to work. That's only fair to everyone, because everyone's facts and law are incorporated in that process.

Mr. Dan Vandal: It's complicated.

Jennifer, do you have any thoughts on that? We only have about 50 seconds on this.

Ms. Jennifer Preston: To build on that as well, even when you look at a situation like Kinder Morgan, which has been so much in the press—and this question around that has been built up—signing an impact agreement doesn't mean you're necessarily for the project. You may have felt that was the only option. I think it's important to know that.

I would also say that I think one of the things about the NEB approval of Kinder Morgan is that it wasn't necessarily a good process. That has created part of the problem that we have. Having better processes before we reach this point, which is what Bill C-262 is all about, means that we're not hitting those conflicts.

Why did we hit a conflict wall? We hit a conflict wall because Tsleil-Waututh First Nation was not accommodated in that process. We hit a huge wall. If we have better processes that don't lead us to those enormous conflicts, we're going to be way better off.

Mr. Dan Vandal: Thank you.

The Chair: Now we're moving to MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair.

Thank you to the witnesses.

I want to say up front that the UN declaration has the support of all parties. What we're talking about is Bill C-262 not necessarily having the support of all parties.

When it's characterized that any objection to it is fear and rooted in colonialism, I take exception. As legislators, I think it's important that we understand the implications of any piece of legislation that's before us. I just want to make that note.

We heard from Mr. Joffe, who is very well recognized and honoured. We've heard from a number of lawyers who have a very different perspective in terms of what the implications of Bill C-262 might be in Canada. I think that is a legitimate and important debate, and we shouldn't shut down that debate.

I have one question. We can have a lot of lawyers speculating on what it will mean to Canada, but is this important enough that it should be a reference question to the Supreme Court, in terms of really understanding it and changing Canadian laws to be consistent with the declaration?

I'll put that out there. Is that something that should be done?

Mr. Paul Joffe: I had the privilege of being in the reference on Quebec secession, so I know when it's important to resolve certain questions. I don't believe this is one of them because there are just too many situations. How is the court going to judge? Usually they want a contextual analysis and you need a certain set of facts. Just to say one way or another doesn't do anything.

I work with broad coalitions not only in Canada but internationally, and also in Latin America, and we've always worked toward building consensus and looking for co-operation. How can we work with states?

We see this as a tremendous opportunity for real co-operation. When one looks at colonialism, it was basically built on unilateralism. Someone knew best, and knowing best didn't work out. Romeo's bill has at least two processes for co-operation.

That would be my brief answer.

● (1710)

Mrs. Cathy McLeod: I certainly agree that we have a very poor record of collaborative consultation, of honouring the agreements that are already made. We don't have a good track record for the last 150 years, and we certainly heard that with our land claim study.

You were talking about consent, and I'll bring Pam Palmater back because I've mentioned her before. We're still waiting for the Justice officials to talk about consent. We had one person who talked about three possible definitions for consent. Pam Palmater asks in what alternate universe does consent mean something different in this bill as opposed to life in general. I think she has a pretty good point there.

The NDP is clearly on the record that it's not contextual, that it's every single first nations ever impacted that has to give consent. That is something that one of Mr. Saganash's colleagues said when he described the application of FPIC, that every single first nations impacted must give consent. You don't want to use the word "veto", but if you say "yes" or "no", then I think.... Essentially, if you're requiring consent from every single first nation, which the NDP have interpreted it as.... We look at Pam's comments. We can't even get a definition from the Justice lawyers.

Can you talk to me more about that issue?

Ms. Pat Van Horne: I can talk to it in terms of collective bargaining. There is a context that we negotiate, for example, in northern communities, time for our indigenous members to participate in traditional activities, so there's time off for different activities on the land. That is different from an impacts benefit agreement. It's something that by virtue of the fact they're union members, they're a part of. Collective bargaining with employers is the context that I know. It's teeny-weeny compared to a whole government looking at every piece of law and everything that we do, and measuring it against UNDRIP, but it's not a bad model, in my view.

Mrs. Cathy McLeod: Another interesting point that was brought up at our last session was the impact of the Daniels decision.

Mr. Joffe, what thoughts would you have around that particular issue in terms of that whole consent process?

Mr. Paul Joffe: Yes, first of all, I read something on the Daniels decision by Thomas Isaac and Arend J.A. Hoekstra. I read a little about it.

International instruments cannot include details for every possible situation; that's not how it works. You have 193 countries. It's impossible for them to know. Even if they do know, which they couldn't, all 193, tomorrow the situation could change. That's not the purpose. International instruments help to reinforce and to interpret Canadian law. That's just the way it works.

● (1715)

Mrs. Cathy McLeod: We're looking at applying an international instrument to Canadian law, so it becomes very important to understand the implications of things like the Daniels decision, getting consent, and whom to consult with, let's say, on laws of general application for article 19.

Mr. Paul Joffe: First of all, if you're going to consent, you have to look at each of the situations. Let's say that you do get different results from different first nations. It's all part of the mix. One cannot say how it's going to come out without balancing the facts in law in each case. That doesn't mean you take away their right to say no. If a first nation feels that it's going to really suffer, it has to be able to say "yes" or "no". What I said at the beginning is that this isn't absolute. There's no veto. In my mind, veto means absolute; you don't have to take into account the facts in law.

I'll leave it there because we're short of time.

The Chair: Thank you.

MP Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair.

Thank you to our presenters.

Pat, please relay my greetings to Mr. Neumann and tell him I really appreciate the support for Bill C-262 from your union.

Thanks, Jennifer and Paul, for your presence here. I think it's important. Your combined experience on the declaration is about 100 years.

Paul, you said in your comments that the consent we find under international human rights law is the same consent we find in Canadian constitutional law. Can you point to any decisions of the Supreme Court where these elements were addressed: free, prior, and informed consent?

Mr. Paul Joffe: I'm not aware that it went to the Supreme Court. It's just that one has to decide first whether these rights are relative. Human rights are relative. They can't be absolute. If everyone had absolute rights, how would you determine any issue? Everyone has the ultimate decision because they said so. Life doesn't work that way. In international and domestic law, human rights are relative. That rule exists in both. That's why it leads to very moderate and co-operative conclusions.

I have to compliment the United Steelworkers. I read their brief, and it's right on as to how it works. They said clearly that they supported it because it was relative. It has to be relative. "Relative" means including everyone. "Absolute" is impossible. We can't all be absolute decision-makers.

Mr. Romeo Saganash: You also mentioned the American Declaration on the Rights of Indigenous Peoples. I've read both declarations, and there are provisions in the American declaration that are stronger than provisions in the UN declaration. Can you explain to the committee how that works? There are provisions that are weaker.

Mr. Paul Joffe: First of all, just know that the consent provisions in the UN declaration have now been approved, pretty much word-for-word, in the American declaration. How do you decide when both the American declaration, which is a regional one applying to the Caribbean and all the Americas...?

I did a detailed study, which I'm happy to share with this committee. I worked on the American declaration as well as the UN declaration. What came out is that the minimum standard would be the higher of the two minimum standards if both addressed the same point. If they didn't, then you go to the one that addressed what you're talking about. If both address it, then the new minimum standard is the higher one.

What you see here—and I'm glad Romeo brought it up—is it continues to build. International law is totally using the UN declaration throughout the UN system, and now we have the American declaration. It's not going away, so it pays to try to come to some understanding.

● (1720)

Mr. Romeo Saganash: Jennifer, I know you participated in the process during the time it lasted at the UN. You probably were present in New York for the final vote on September 13, 2007, where 144 states were in favour, four against, and there were 11 abstentions. We heard from Thomas Isaac yesterday. He spoke of trying to minimize the importance of the consensus vote that happened in September 2007.

He states in one of his books, "Of those 88 states with Indigenous peoples 42 (less than half) voted in favour. 11 states abstained and 16 were absent for the vote. Further, many of the states that voted in favour of UNDRIP placed conditions or caveats on their vote...".

Do you have comments about that?

Ms. Jennifer Preston: I think that's a real mischaracterization of the way the General Assembly works at the UN. When the General Assembly has a resolution before it, states have the opportunity to vote for or against it, or to abstain. If you're not in the room, that's irrelevant, and it's not counted as anything. In this case, four states voted against it, and all four of them have reversed their position. Canada reversed its position in 2010. When those four states reversed their positions, that made the UN declaration a consensus international instrument. Again, abstentions don't have any legal bearing either on the vote. Once it becomes a consensus instrument, it means no state in the world formally opposes it.

For this declaration, it's been almost eight years since that happened. It has also been reaffirmed by the General Assembly, and Canada, at least eight times by consensus, so at the international level they have reaffirmed their consensus support for the UN declaration.

I've seen that passage of Mr. Isaac's before, and I think his math doesn't add up. I think if you add up the number of member states in the UN, there's something wrong with his math. I'm not going to go into that now, but I would say that it was a very bizarre interpretation of the voting rules within the United Nations.

Mr. Romeo Saganash: Thank you.

Paul wanted to answer.

Mr. Paul Joffe: The only thing I was going to say is that I submitted to this committee a commentary on Mr. Isaac's and Mr. Hoekstra's work, and I dealt with that question. First of all, you'll see in there that his arithmetic was wrong, and even if you accept it, one should look at how states with indigenous peoples voted. It was actually 57, not 42, out of 88, and so he was wrong there.

As Jennifer said, if the world has now reaffirmed the UN declaration eight times by consensus at the General Assembly, what is the difference between that and what happened when four states later changed their vote? It doesn't make sense. The fact that it has been reaffirmed eight times by consensus says that if the whole world can do this, there must be something valuable in it.

Thank you.

The Chair: I wish we had more time, but I'm going to have to cut you off.

The meeting is adjourned.

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